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D. M. FROST, Editor and Manager. | L. A. LAUBER, Asst. Editor and Man.

WEDNESDAY, NOVEMBER 20, 1889

OUR congressman, Hon. S. R. Peters, will leave for Washington, D. C. on or about the 20th inst.

KANSAS is prolific in prospects, but it is equally as great in possibilities. In an agricultural point of view Kansas is a world beater.

STATE *Journal*: The democrats say that it is only the ring that is opposed to resubmission in this state. The "ring" includes about three hundred thousand of the voters of Kansas. It is a great ring. and forms an adamantine circle about Kansas that will never admit the saloon, that's certain.

LAS VEGAS *Optic*: Col. J. W. Dwyer, president of the Territorial Live Stock Association is authority for the following prediction and statement of the financial condition of the cattle men of New Mexico and Colorado: "The cattle community are all in debt, and most of the heavy dealers will fall by the wayside before relief comes. There will be a panic before long and many will go down."

A MOVEMENT is on foot to erect a monument to the memory of ex-Governor John A. Martin. Every printer in the state of Kansas will feel a pride in contributing to honor one who has always stood foremost as the preserver of the art preservative, and every citizen of Kansas will give aid to a project which tends to keep fresh in the mind the memory of its most respected citizen and high official.

NATIONAL *Issue*: Twenty-five snakes running through the streets—that's free whisky. Twenty-five snakes gathered into a box in which twenty-five holes are made by authority of the court—that's low license. Ten of the holes are closed and the snakes all get through the other fifteen—that's high license. Drive all the snakes over to the next village—that's local option. Kill all the snakes—that is prohibition.

RESUBMISSIONISTS from Kansas are invited to call on M. M. Brennan, 501 Grand avenue, Kansas City. He is a great entertainer, and is very particular to see that the wants of "Kansas sufferers" are properly provided for.—*Dodge City Times.*

Such entertainment as one receives at "501 Grand Avenue," is not very elevating, to say the least, however enjoyable it may be to the *Times* resubmissionist. We prefer to be a "sufferer" rather than to retrograde in life.

WHILE it is true that a good many people have left western Kansas during the past two years and while a few more may follow, yet we venture the assertion that not one farmer (?) that has left is missed very much to the people, as the majority that did go were simply adventurers who came here expecting to raise a bountiful crop without labor which they found could not be done. The success of the farmer in this as well as in all other new countries means work, and without it farming is a failure.

STATE *Journal*: The convention of Kansas stockmen to meet in Topeka, January 8th, next, will be very largely attended, at least several hundred delegates being expected. The object of the convention will be to consider the depressed condition of the live stock industry—including horses, cattle, sheep and swine. The state board of agriculture will be in session at the same time, and its members will co-operate with the visiting stockmen in suggesting measures of relief. It is probable that a powerful state organization of stockmen will be formed.

LAS VEGAS *Optic*: Another snow storm set in this morning. This one following so closely upon the one last week is very unusual in this country and naturally suggests the thought that the climate of New Mexico must be slowly changing. It is not an improbable thing that the settling up of the western portions of Kansas and Texas and the planting of trees over large areas of what was formerly desert lands and the advent of the locomotive and telegraph, are creating a greater rainfall in the lower altitudes, and consequently a greater snowfall in the higher ones; at least it is a reasonable proposition, that as the timber on the plains increases in size and the area is gradually pushed westward the rains and snowfall will gradually follow and the climate along the eastern base of the Rocky mountains will become more similar to the climate of the valleys.

FALL wheat up to date has continued to grow and is making an excellent showing at this time.

FORD county produced more corn in 1889 than was raised in the county in all the years since its first settlement.

THE dry goods house of Rothschilds Bros., at Salina, was damaged by fire Sunday to the amount of thirty thousand dollars.

THE late snow storm in New Mexico and Texas has been the most severe on stock cattle and sheep known for years in those parts.

THE Ness City *Times* stopped its machine long enough last week to announce the fact that the paper had received a land notice for publication from a republican register.

JUST now the Wichita papers are going for the editor of the *Hutchinson News* on account of the fight that paper is making on resubmission. You are in the right Bro. Easley. Stay with 'em, even though it takes an ear.

EVERY farmer in Kansas who pays any attention at all to stock raising ought to have a field of alfalfa sufficiently large to produce enough hay for what stock he possesses, besides a patch of ground sown to rye for late fall and early spring grazing. Western Kansas is especially adapted to both.

BELIEVING that one newspaper can thrive better than four, Messrs. Thompson & Walcott, proprietors of the Guthrie (I. T.) *Daily News*, accordingly purchased all the papers published at Guthrie, comprising the *Republican*, *Times* and *Get Up*, and the four papers will be issued in the future under one grand consolidation.

NOW is a good time for farmers to prepare for their next season's work; to look about for seed for early spring planting; to put all their farming implements in good condition so as to be ready when they are to be used; mend up your old harness; sharpen up your plows, and be in readiness when the season opens so as to put in all your time in the field.

THE loan agents, mortgage companies and railroad corporations are as largely interested in this section of the state as any class of people we could name. They should all join their issues and get good practical farmers and stock raisers to settle the lands vacated by the adventurers, speculators and itinerant farmers. Give us good practical farmers and the future of western Kansas is assured.

LATE despatches bring tidings of a revolution in Brazil accomplished without the shedding of blood. Emperor Dom Pedro has been deposed and banished, and a republic established and a president elected to administer the government in his place. The new government has the adherence of every province and will be known as the United States of Brazil. By this act the last representative of royalty has been driven from South America. It would seem that the soil and climate of the western hemisphere is not congenial to monarchs.

TOM ARCHER, a billiard hall proprietor of Hutchinson, was shot Tuesday night for belaboring a policeman over the head with a billy. Hutchinson is getting almost a tough as Dodge City when they used to shoot men because they refused to drink bug-juice.—*Larned Optic.*

"Almost as tough as Dodge City." Certainly such conduct as that related above is to be deplored, and the more so when a near neighbor attempts to justify the act by conveying the idea to strangers that it is nothing compared to what would be done just a few stations up the road. What Dodge City was in the past has been published throughout the length and breadth of the land, each report magnifying as it went, but never was there anything quite so bad as the disgraceful remark of our neighbor, the *Optic*. Just such "funny" remarks as these has brought the name of Dodge City into bad repute. A thinking man will not make an assertion he cannot prove.

The Louisiana planter tells the Kansas sorghum manufacturers not to despair because the experiments have not been entirely successful. The planter says: "We know that sorghum thrives in drier climates than that of western Kansas. We know that dry sorghum has been relied on for food for ages by millions of people in arid desert countries. We know that dry western Kansas and arid eastern Colorado have produced, and can produce sorghum canes of extraordinary richness, and we do not lay aside our faith in sorghum as a source of prosperity to the people of western Kansas, because new sugar factories, with new sugar makers, with new cane growers in new and unimproved and untried localities have not succeeded in the first attempt, when all the conditions were unfavorable. It is wholly useless to suppose that only capital is necessary in sorghum sugar manufacture, that experience is not essential, that sorghum cane grown under any condition will yield sugar, that any kind of sorghum seed will answer, or to suppose that anybody can grow sorghum for sugar. When sorghum seed has been bred as other seeds have been bred, when sorghum growers have learned to grow sugar, when sugar house managers and operatives have learned, then sorghum will be to Kansas what the sugar beet is to Germany."

IMPORTANT DECISION.

Judge Botkin's Ruling in the Case of Wilson-Toms Investment Company vs. James Hillyer.

Findings of the Court.

Springfield (Kas.) Republican.

The court finds from the evidence that the contract sued on was made and entered into on the 22d day of October, 1887, at which time the land described in the petition was a part of the public domain and was claimed by the defendant under the pre-emption laws of the United States.

That the final proof on said land under the pre-emption law, was made by the defendant on Oct. 28, 1887, six days after the contract was entered into.

That plaintiff advanced to the defendant at his request, under the contract, the sum of $191.90 to pay the government for the said land.

The plaintiff further paid the defendant the sum of $10.00 under the contract, making a total of $201.90 which the plaintiff advanced to the defendant or for him at his request.

That the defendant has failed to comply with his agreement to execute and deliver to plaintiff his bond, note and mortgage, as he agreed he would in contract of Oct. 22, 1887.

That prior to the commencement of this action, plaintiff had demanded of defendant a performance of defendants part of the contract and that at same time plaintiff offered to perform his part of the contract.

That of the money advanced by plaintiff $191.90 secured defendant a title to the land above mentioned.

FINDINGS OF LAW:

Plaintiff complains that the law is powerless to afford it edequate relief and appeals to equity to stretch forth its helping hand and assist it in the procurement of its rights under the contracts set up in plaintiff's petition. If there was ever a case where equity should respond to the call for help it is certainly in a case of this kind, providing this case be one where equity can interfere; the defendant has secured the title to a quarter section of government land by the aid which plaintiff extended him to pay the government price of the land. Plaintiff paid out its money for the defendant under the contract solemn and binding in conscious if not in law, to procure defendant a home. Is that contract binding in law? If so equity will enforce it. If not, equity must leave the parties where it finds them.

In the case of the St. Peters Land Co. against Robt. Bunker 5th Min. page 200 and 201, there was an agreement to convey a portion of his pre-emption claim to the plaintiff after final proof and on that agreement plaintiff advanced to defendant the sum of $150.00. The defendant refused to perform; the suit was brought to recover back the money. The contract was made before final proof and the supreme court of Minn. through Judge Atwater says: "A contract made before and in view of, and for the purpose of making a pre-emption, to convey the land pre-empted, can only be enforced by the commission of perjury, a fact well known to the parties at the time of making the contract. The contract upon the face of it bears the evidence of moral turpitude and the law can aid neither party either in enforcing it or recovering back what has been paid under it. If the plaintiff has suffered from gross breach of good faith on the part of the defendant he at least had notice of what he might expect at his hands from his readiness to violate the law and while good conscience can in no means tolerate the conduct of the defendant it cannot sympathize with the plaintiff in his misfortune since his conduct has been instrumental in enabling the defendant to perpetrate the wrong.

In the case of McClure against Smith 9th Minn. pages 256 to 259 the husband had abandoned his wife, the defendant, leaving her destitute and declaring he would never return to live with her again. The wife finding herself and minor children without a home and without the means of support and knowing of a tract of government land which she could pre-empt if she had the means, she entered into a contract with the plaintiff by which plaintiff agreed to advance her the government price of the land, $200.00 and money to the amount of $55 which sum defendant agreed to secure by mortgage after final proof. And after final proof defendant executed and delivered to plaintiff her note and a mortgage upon the land which she had pre-empted and proved up on to secure said note and interest. Suit was brought on said note and mortgage; the opinion was delivered by Judge McMillan who says: "The contract having been made prior to the purchase (final proof) of the land by defendant, Ann Smith, is clearly within the prohibitor of the 13th section Act of congress Sept. 4th, 1841, under which she pre-empted the land mentioned; that action provides among other things that before the person claiming the benefit of that act shall be allowed to enter any lands upon which he or she has settled, said person shall make an affidavit that he or she has not directly or indirectly made any agreement or contract in any way or manner with any person or persons whatsoever, by which the title he or she might acquire from the United States, shall inure in whole or in part to the benefit of any person except himself or herself. A title in this instance, which Ann Smith acquired would, if the contract be valid, innure to the benefit of the plaintiff to the extent of his charge or lien upon the premises. The contract is therefore illegal and void, and the note and mortgage being the fruits of the contract must fall with it. A court of equity will leave the parties where it finds them. Not that it sees anything meritorious in the defendant but because no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act."

Again in the 5th Minn. page 422 to 435, in the case of Edwards against Folsom the defendant has agreed for a valuable consideration, that he would convey to the plaintiff after final proof (entry) an interest in his land, and the court says on page 427: "It is hardly necessary to say that such an agreement made with a pre-emptor concerning lands he was about to pre-empt under the act of congress 1841, would be utterly void and so tainted with immorality as to render it incapable of becoming the foundation for any rights let alone the equities. It involves perjury under the act—and nothing more nor less."

In the case of Warren against Van Brunt, (19th Wallace, pages 651 to 655) the parties had both filed on a fractional quarter of land and to save expense and the annoyances of a contest they had agreed that Van Brunt, one of the parties, should make final proof upon the land without molestation by the plaintiff, and that afterwards Van Brunt should deed to the plaintiff a certain interest in said fractional quarter. This is the kind of contracts that courts encourage most and will most readily enforce—a contract in furtherance of peace and to avoid litigation. But in this case the supreme court of the United States through Chief Justice Waite says: "An entry could not have been made in trust for Warren, and if it could not have been made a court of equity will not decree that it was; all contracts in violation of this important provision of the act (1841) are void and never enforced." Chief Justice Waite then referred to the Minn. decision already mentioned, and said: "We are satisfied with these decisions."

Our own supreme court in the case of Brewster against Madden 15th Kansas 195, has followed the doctrine laid down by Judge Waite in the foregoing decision and the doctrines of the Minnesota court. At the time of the decision the supreme court of the state was composed of Judges Kingman (C. J.) Bailey and Brewer. The decision was rendered by Judge Brewer, the other justices concurring. It is admitted by lawyers of all classes that Judges Kingman and Bailey were doubtless the best qualified jurists of the west at that time, on questions concerning the public domain and the laws governing and regulating the same. They had gained this reputation not only by long years of practical experience among the settlers, but in the land offices of the west, and their concurrence in Judge Brewer's opinion must necessarily command the greatest respect and bear with it the greatest weight. In that decision the court says: "The terms 'grant' and conveyance are broad enough to secure a mortgage as much so as the term alienation in constitutional and statutory homestead sections and that it is so used in this section (sec. 14 act Sept. 4, 1841) is evident from the terms of the affidavit required; that a mortgage is certainly an agreement or contract by which the contract could inure in part to the mortgagee, and that as the pre-emptor must swear he has made no such contract, so the agreement when made must be null and void. We are inclined to favor the latter construction and to hold that congress intended that when the title passed by the entry [final proof to the pre-emptor] it should pass perfect and unincumbered.

Against these decisions of the supreme court of Minnesota, Kansas and the United States, this court has been arrayed the rulings of Secretary Teller and Vilas, and Assistant Secretary Muldrow. An opinion of the Secretary of the Interior is entitled to respect; but he is not a judicial officer and his opinion cannot over-ride and ride down the opinion of the highest tribunals of the federal government and of this state. His opinion when not in conflict with the rulings of court are entitled to the same respect as an opinion of an attorney general which no lawyer has ever claimed to be absolutely binding upon a court.

Until the supreme court of this state and the United States reverse and overrule the decisions quoted this court is bound to follow the path mapped out by these decisions, the rulings of the secretary notwithstanding.

In the case at bar the plaintiff knew when it entered into the contract set up in its petition, that the defendant was a pre-emptor and that the title to the land was in the United States government. It assumed the risk when it advanced its money that the defendant would act honorably and make good his part of the agreement. The defendant has failed and refused to do as he agreed, but the contract was contrary to law and is illegal and void and equity will not enforce it. The demurrer to the plaintiff's evidence will be sustained.

Now is the time to crowd the feeding of cattle and hogs if you want to put on fat. Don't wait until winter sets in before you commence to put the stock you desire to fatten on full feed.

There iz lots ov pholks in this world who rather than not find enny fault at awl, wouldn't hesitate tew say tew an angle worm that hiz rall waz altogether too long for the rest ov his boddy.—Josh Billings.